

**STATE OF GEORGIA**

**COUNTY OF FULTON**

**CITY OF SOUTH FULTON**

**ORDINANCE NO. 2017-028**

AN ORDINANCE, GRANTING TO ATLANTA GAS LIGHT COMPANY, A GEORGIA CORPORATION, HEREINAFTER DESIGNATED AS "COMPANY", ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO USE AND OCCUPY THE STREETS, AVENUES, ROADS, PUBLIC HIGHWAYS, ALLEYS, LANES, WAYS, PARKS, AND OTHER PUBLIC PLACES OF THE CITY OF SOUTH FULTON, GEORGIA, FOR CONSTRUCTING, MAINTAINING, RENEWING, REPAIRING, AND OPERATING A GAS WORKS AND GAS DISTRIBUTION SYSTEM, AND OTHER NECESSARY MEANS FOR MANUFACTURING, TRANSMITTING, DISTRIBUTING AND SELLING OF MANUFACTURED, NATURAL OR COMMINGLED GAS WITHIN AND THROUGH THE CITY OF SOUTH FULTON, GEORGIA; AND FIXING THE TERMS AND CONDITIONS OF SUCH GRANT; TO PROVIDE PROVISIONS GOVERNING THE FRANCHISE FEE CALCULATION; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**WHEREAS**, the City of South Fulton ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia;

**WHEREAS**, pursuant to Act 421 of the 2016 session of the Georgia General Assembly (the "City Charter"), the City of South Fulton incorporated on May 1, 2017;

**WHEREAS**, pursuant to Section 1.12(b)(32), the City is authorized to grant franchises or make contracts for public utilities and public services and to prescribe the rates, fares, regulations, and the standards and conditions of service applicable to the service to be provided by the franchise grantee or contractor;

**WHEREAS**, the City considers collecting a franchise fee from a gas company utilizing the public rights of way as compensation to the public for the use of the rights of way and a means of promoting the public health, safety, welfare and economic development of the City and to protect public works infrastructure,

**WHEREAS**, the City of South Fulton City Council finds it in the best interest of the City to adopt and enter into a Gas Franchise Agreement as set forth herein with Atlanta Gas Light Company, a Georgia Corporation.

**WHEREAS**, the City and the undersigned warrant and represent that there is no such franchise granted by the City and in force and effect, to any other person, firm or corporation and that the City is under no contract or obligation to any other person, firm

or corporation, in anywise relating to the installation of gas service in the City of South Fulton, Georgia; now, therefore

**THE COUNCIL OF THE CITY OF SOUTH FULTON HEREBY ORDAINS**  
as follows:

**SECTION 1.**

**Definitions.**

- a. *Franchise Fee Factor ("FFF")* means \$14.62, as periodically adjusted pursuant to Section 4.
- b. *Dedicated Design Day Capacity or "DDDC"* means the sum of the individual capacity in Dekatherms attributable to all Firm Customers, as defined below, located within the city limits of the City, which as of the date hereof is 46,696.879.
- c. *Firm Customers* means all residential and business customers who purchase gas service that ordinarily is not subject to interruption or curtailment.
- d. *Fiscal Year* means the 12-month period ending September 30, of each year.
- e. *GPSC* means the Georgia Public Service Commission or such successor regulatory body, having general regulatory authority over the Company.
- f. *Franchise Fee Factor Adjustment ("FFFA")* means the percent change in the cost of service as explicitly or implicitly determined by the GPSC as a result of a rate case.

**SECTION 2.**

In exchange for making the franchise fee payments as provided in this Agreement, the City grants to the Company, its successors and assigns, a non-exclusive right to lay, construct, extend, maintain, renew, replace and repair gas pipes, valves, manholes, service boxes, posts, lamps, structures, appliances and all appurtenances and appendages under, along, through and across any streets, avenues, roads, public highways, alleys,

lanes, ways, parks, rights-of-way and other public places in the City (hereinafter collectively referred to as the "City's Property") and to use and occupy the City's Property for the purpose of therein laying, constructing, extending, maintaining, renewing, replacing and repairing mains, pipes, valves, manholes, service boxes, posts, lamps, structures, appliances and all appurtenances and appendages thereto, used and useful for the manufacture, transmission, distribution and sale of gas within and through the present or future territorial limits of the City, such right, when exercised as herein provided, to commence as of May 1, 2017 and to continue for a term for thirty (30) years from the date of approval of this ordinance.

### SECTION 3.

Company shall be entitled to charge for gas distribution services furnished by it such rates as are prescribed by the GPSC or other lawful regulatory body of the State of Georgia.

### SECTION 4.

The total dollar amount of franchise fees paid by the Company to the City shall be calculated as follows:

The following formula quantifies this payment:  $FF = \frac{FFF \times DDDC}{FFFA}$

Where,

FF = total franchise fees due City for the current Fiscal Year

FFF = the Franchise Fee Factor

DDDC = the Dedicated Design Day Capacity in the City as of the last day of the previous Fiscal Year



The Company shall adjust the Franchise Fee Factor by Franchise Fee Factor Adjustment only when the Company changes its rates as a result of a rate case with the GPSC.

The Company as the holder of the franchise privilege hereunder is responsible for the payment of all franchise fees payable hereunder, and shall file such reports and returns as required by this franchise ordinance. Company shall make the franchise fee payments to City on the same schedule and with such supporting documentation as Company provides to other municipalities in Georgia.

The franchise fee payments required hereunder shall be in lieu of any franchise fee, license fee, permit fee, administrative fee, occupation tax or other payment for the use of the rights-of-way by the Company for the provision of gas service, but shall not prohibit imposition of a license fee or an occupation tax on gas marketers. The Company shall comply with the City's utility right-of-way permitting process, as enacted, so long as such process does not conflict with O.C.G.A. §32-4-92 and is not more restrictive than rules and regulations as promulgated by the Georgia Department of Transportation. The City will not charge the Company any other franchise fee, occupation tax, or regulatory fee, as prohibited by O.C.G.A. §48-13-16, or any other fee prohibited by state law. Company reserves the right to reduce the annual franchise fee payable to the City for any and all fees, taxes or charges assessed by the City in contravention of this section in connection with the granting of permits to perform Company's work on City's Property during such Fiscal Year.

#### SECTION 5.

All rights herein granted and authorized by the City shall be subject to and governed only by this ordinance; provided, however, that the City expressly reserves unto

itself all of its police power to adopt general ordinances necessary to protect the safety and welfare of the general public in relation to the rights hereby granted not inconsistent with the provisions of this ordinance.

#### SECTION 6.

Company, upon making an opening in the City's Property, for the purpose of laying, repairing or maintaining gas facilities, shall use due care and caution to prevent injury to persons, and shall replace and restore the City's Property to its former condition as nearly as practicable, and within a reasonable time, and shall not unnecessarily obstruct or impede traffic upon the streets, avenues, roads, public highways, alleys, lanes, ways, parks and other places of the City.

#### SECTION 7.

Company shall save and keep harmless the City from any and all liability by reason of damage or injury to any person or persons whomsoever, on account of negligence of the Company in the installation, maintenance and repair of its mains and pipe lines located in the City's Property, provided the Company shall have been notified in writing of any claim against the City on account thereof and shall have been given ample opportunity to defend the same.

#### SECTION 8.

This ordinance, after its passage according to law, in writing duly filed with the City Clerk, shall be effective and in full force after the date of acceptance by Company.

#### SECTION 9.

Throughout the term of this Franchise Agreement, the Company shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and shall, upon request, provide the City certificates of insurance designating the City as additional

insured and demonstrating that the Company has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death to any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days' prior written notice to the City. The Company shall provide workers' compensation coverage in accordance with applicable law. The Company shall indemnify and hold harmless the City from any workers' compensation claims to which the Company may become subject during the term of this Franchise Agreement. Alternatively, and in lieu of the foregoing insurance requirements, the Company may elect to self-insure or insure through its captive insurance carrier, provided that Company or its parent company have sufficient net worth to do so, as determined by customary practice in the natural gas utility industry.

#### SECTION 10.

Unless 90 days written notice is given by one party to the other prior to the expiration of this agreement, this franchise shall be considered as renewed and binding in all its provisions for ten (10) years after such expiration and this franchise shall so continue in operation and effect for a further and second term of ten (10) years unless such notice be given by either party prior to the expiration of the first such renewed term.

#### SECTION 11.

If the City grants a franchise to any other person, firm or corporation for the distribution and selling of gas, or if the City elects to establish a municipal system for the distribution and selling of gas, any proposed facilities within the certificated area of



Company must receive prior approval by the GPSC. City shall notify, or shall require any other person, firm or corporation franchised for the distribution and selling of gas to notify, the GPSC and Company of their intent to install facilities parallel to and within the rights-of-way with Company facilities at least thirty (30) days prior to installation, and such installation shall not be initiated without the written consent of the GPSC provided, however, that the GPSC shall act on such notice within a reasonable amount of time and such consent shall not be unreasonably withheld.

**SECTION 12.**

In the event that any provision of this ordinance should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, the remaining provisions of this ordinance shall survive and be applied, and together with the invalid or unenforceable portion shall be construed or reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.

**SECTION 13.**

Any and all notices required to be given under this agreement shall be in writing and shall be delivered by U.S. Mail, return receipt requested, commercial overnight courier or hand delivery and shall be deemed delivered when received or rejected for receipt by the recipient. The parties' addresses are set forth below and can be changed upon thirty (30) days' notice to the other:

City: **City of South Fulton**

Address: **c/o Robins-Ross-Alloy-Belinfante-Littlefield  
Suite 1120  
999 Peachtree Street, NE  
Atlanta, Georgia 30309**

Attn: **Josh Belinfante**

Atlanta Gas Light Company:

P.O. Box 4569

Atlanta, GA 30302-4569

Attn: Rates and Regulatory

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SECTION 14.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SO ADOPTED** by the City Council of the City of South Fulton, Georgia, at a meeting held  
on **November 14, 2017.**

The foregoing Ordinance No. **2017-028** adopted on **November 14, 2017**, was offered by Mayor Pro Tem **Rowell**, who moved its approval. The motion was seconded by Councilmember **Gumbs**, and being put to a vote, the result was as follows:

**“SECOND READING”**

|  | AYE     | NAY     |
|--|---------|---------|
| William “Bill” Edwards, Mayor          | <hr/>   | <hr/>   |
| Catherine Foster Rowell, Mayor Pro Tem | <hr/> √ | <hr/>   |
| Carmalitha Lizandra Gumbs              | <hr/> √ | <hr/>   |
| Helen Zenobia Willis                   | <hr/> √ | <hr/>   |
| Gertrude Naeema Gilyard                | <hr/> √ | <hr/>   |
| Rosie Jackson                          | <hr/> √ | <hr/>   |
| khalid kamau                           | <hr/>   | <hr/> √ |
| Mark Baker                             | <hr/> √ | <hr/>   |

Approved:

  
\_\_\_\_\_, Mayor  
**WILLIAM 'BILL' EDWARDS**

I, MARK MASSEY, Clerk of the City of South Fulton, Georgia, hereby certify that I was present at the meeting of the Mayor and Council of the City of South Fulton, Georgia, held on November 14, 2017, which meeting was duly and legally called and held, and at which a quorum was present, and that an ordinance, a true and correct copy of which I hereby certify the foregoing to be, was duly passed and adopted by the Mayor and Council of the City of South Fulton, Georgia, at said meeting.

IN WITNESS WHEREOF, I hereunto set my hand and the seal of the City of South Fulton, State of Georgia, this **14th** day of **November 2017**.

ATTEST:

  
\_\_\_\_\_  
**Mark Massey, City Clerk**

APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
**Josh Belinfante, Interim City Attorney**





Accepted on behalf of Company, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Atlanta Gas Light Company

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Please Print

Title: \_\_\_\_\_  
Please Print